

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO, ex rel.)	
State Engineer,)	No. 69 CV 07941 KWR/KK
)	
Plaintiff,)	Rio Chama Adjudication
)	
v.)	Pueblo Claims Subproceeding 1
)	
ROMAN ARAGON, et al.,)	
)	
Defendants.)	
)	

JOINT STATUS REPORT

Pursuant to this Court's Order of January 10, 2022 (Document 11596), the undersigned Parties submit this Joint Status Report regarding negotiations to resolve the water rights claims of Ohkay Owingeh in both *Aragon* and *Abbott*, and the water rights claims of Santa Clara Pueblo in *Abbott*. This Joint Status Report is being filed simultaneously in the companion case styled *State of New Mexico ex rel. State Engineer v. Abbott*, No. 68-CV-07488 (KWR/JHR).

1. Progress in Settlement Negotiations

Settlement discussions have continued under work plans developed by the mediators and approved by the Parties. As previously reported, the discussions are organized by work groups comprised of attorneys and settlement Parties with particular interests in the subject matter of the work group. Currently, the work groups are: 1) Rio Chama Bosque Restoration; 2) Rio Chama Acequias; 3) Aragon/Abbott Water Rights Administration; and 4) Aragon Decree. In addition, the entire group of attorneys and settlement Parties continues to meet periodically for updates on the progress and activities of the work groups. Ohkay Owingeh and Santa Clara Pueblo also met regularly since the last status report. In addition, significant technical work from two technical

committees is continuing. Some of the technical work is focused specifically on aspects of Ohkay Owingeh's settlement proposals in the Rio Chama Basin and a great amount of technical work is currently underway to develop necessary models and assess the viability of certain options for providing "wet water" solutions in the Santa Cruz/Truchas Basins for both Pueblos and the acequias for settlement in the *Abbott* adjudication. The technical work is progressing and will inform the discussions and assist the settlement Parties in evaluating the feasibility of settlement options.

Since the last joint status report, the settlement Parties in various combinations and the mediators have conducted more than 30 meetings, either in person, virtually or by telephone. Some of the meetings address *Abbott* issues exclusively while others focus on issues unique to *Aragon*. For those issues common to settlement issues affecting the settlement Parties in both cases and the two Pueblos, large group meetings have been convened.

The mediators continue to prepare agendas for meetings, moderating the meetings, assigning tasks between meetings and preparing summaries of the results of meetings for the settlement Parties. The mediators continue to have separate discussions with individual Parties as necessary to advance the discussions.

Settlement confidentiality requirements preclude a full explanation of the progress that has been made on the multiple issues that are necessary to resolve to achieve an overall settlement of Ohkay Owingeh's water rights claims. The settlement Parties can report that progress has been made, *inter alia*, on the following general topics: 1) options for water delivery mechanisms to enable Ohkay Owingeh to restore and maintain its bosque areas, and to irrigate historically irrigated acres on its Grant lands in the Rio Chama stream system (preliminary technical report completed and distributed to the settlement Parties); 2) agreement between

Ohkay Owingeh and the State of New Mexico on the geographic extent of Ohkay Owingeh's current and historically irrigated acres in the Rio Chama basin; 3) documentation of Ohkay Owingeh's projected population and economic development plans for purposes of the Pueblo's proposal to quantify its domestic, commercial and municipal future uses; 4) shortage sharing arrangements among the acequias and Ohkay Owingeh in the Rio Chama stream system (draft settlement provisions are being revised); 5) discussion of general principles of administration of Ohkay Owingeh's water rights; 6) a uniform methodology for establishing irrigation water requirements for the Rio Chama stream system; and 7) potential sources of funding the costs of the settlement.

In the Rio Santa Cruz watershed in the *Abbott* case, Ohkay Owingeh and Santa Clara Pueblo have initiated discussions with the State of New Mexico and the acequias in that stream system to identify and confirm acres that either are currently being irrigated or have been irrigated in the past. In addition, Ohkay Owingeh, Santa Clara Pueblo, and the United States have continued discussions regarding a path to resolution of the water rights claims of both Pueblos, and that of the United States as trustee for both Pueblos, in the *Abbott* case.

Because of the pandemic there have been delays in contracting and completing necessary field work related to updating Santa Clara Pueblo's water rights claims in *Abbott* and in identifying and assessing potential wet water solutions to assist in resolving those claims. Despite these obstacles, progress has been made on these issues since the last status report. The Bureau of Reclamation and Bureau of Indian Affairs are working closely with Santa Clara Pueblo on various technical analyses to assess the viability of potential specific settlement concepts. In addition, Santa Clara Pueblo is working with the Department of Justice and the Bureau of Indian Affairs on completing studies related to developing and/or updating the

Pueblo's preliminary water rights claims. (Under the *Abbott* adjudication's scheduling order, the Subproceedings on Santa Clara's water rights have not been initiated; the only active and currently stayed Subproceeding is that concerning Ohkay Owingeh's past and present water rights). Santa Clara Pueblo has started a productive dialogue with one of the acequias and will be starting more focused discussions with the State.

2. Scheduling of Dispositive Motions

The undersigned Parties continue to believe that the resumption of litigation would hamper their efforts to resolve Ohkay Owingeh's and Santa Clara Pueblo's water rights claims through negotiation. The undersigned Parties continue to be committed to the negotiation process. Therefore, they do not anticipate the need for this Court to schedule the filing and briefing of dispositive motions within the next six months.

3. Rescheduling the Trial

For the same reasons, the undersigned Parties do not believe that the trial of Ohkay Owingeh's water rights claims in this Subproceeding should be scheduled at this time.

4. Expectations on Timing of Settlement

Progress toward a settlement continues to be made. The Parties, with the mediators' assistance, are working diligently to accelerate the pace of the negotiations and the achievement of milestones toward settlement. A comprehensive settlement of both Pueblos' claims and those of the United States within two years appears to the Parties to be a reasonable target date.

5. Other Matters

The undersigned Parties suggest that the Court require the filing of a joint status report six months from now, on December 9, 2022, at which time they will report to the Court on their progress and on the question of whether dispositive motions should be scheduled, or litigation should otherwise resume.

The City of Española did not respond to Ohkay Owingeh's request to join this Joint Status Report.

Dated: June 10, 2022

Respectfully submitted,

/s/ Curtis G. Berkey

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of June, 2022 , I filed the foregoing electronically through the CM/ECF system, which caused the Parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

/s/ Curtis G. Berkey

Curtis G. Berkey